

A.G. Contract No.: KR01-1435TRN
ECS File No.: JPA 01-109
Project No.:
Section: Sundog Bridge
TRACS No.: H3957 01C
Budget Source Item No.:

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI-PRESCOTT INDIAN TRIBE

THIS AGREEMENT is entered into this date April 20, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the YAVAPAI-PRESCOTT INDIAN TRIBE, acting by and through its BOARD OF DIRECTORS (the "Tribe").

I. RECITALS

1. The Tribe is empowered to enter this Agreement by Arizona Revised Statutes Section 11-952 and its Articles of Association and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tribe.

2. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated the authority to execute this Agreement on behalf of the State.

3. Upon approval by resolution of the State Transportation Board, as mutually agreed to by the State and the Tribe, the State will abandon ownership jurisdiction and maintenance responsibilities on the existing bridge on Sundog Road (the "Existing Sundog Bridge") and the connecting roadway beginning on the Tribe's land and such connecting roadway tying into SR 89 (the "Connecting Roadway") as shown on Exhibit A, attached hereto and made a part hereof. It is agreed to by both parties that the abandonment of the Existing Sundog Bridge and the Connecting Roadway will enable the Tribe to replace the Existing Sundog Bridge with a new, five-lane bridge, as shown on Exhibit A, attached hereto and made a part

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27472
Filed with the Secretary of State
Date Filed: 04/20/05

Jenice K. Brewer
Secretary of State

By: Darryl D. Shaenewald

II. SCOPE OF WORK

1. The Tribe will:

a. Request a construction access permit from the State's Department of Transportation, Prescott District Office, to access and replace the Existing Sundog Bridge with the New Sundog Bridge.

b. Accept ownership of the Existing Sundog Bridge and the Connecting Roadway upon issuance of the construction access permit referenced in Article II. 1. a. above and in accordance with Article I. 3. above (*See Exhibit A*).

c. Plan to complete the New Sundog Bridge within five (5) years after accepting ownership of the Existing Sundog Bridge and the Connecting Roadway. The Tribe's plan for the Existing Sundog Bridge is to remain open to all motorized vehicle traffic upon acceptance of ownership and liability described herein. In the event the New Sundog Bridge is not completed within this five (5) year period, the Existing Sundog Bridge and the Connecting Roadway shall remain open and the Tribe retains ownership and liability of the Existing Sundog Bridge and the Connecting Roadway. (*See Exhibit A*).

d. Upon completion of the New Sundog Bridge, as described in Article II.c. above, and the subsequent closure by the Tribe of the Existing Sundog Bridge, invoice the State no earlier than *July 1, 2009* for \$1.4 million.

2. The State will:

a. Upon approval by resolution of the Arizona Transportation Board, as mutually agreed to by the State and the Tribe, abandon ownership jurisdiction and all maintenance responsibilities for the Existing Sundog Bridge and the Connecting Roadway as shown on Exhibit A, attached hereto and made a part hereof.

b. Upon completion of the New Sundog Bridge and the subsequent closure by the Tribe of the Existing Sundog Bridge, pay the Tribe \$1.4 million within thirty (30) days of receipt and approval of an invoice and no earlier than *July 1, 2009*.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of said improvements, payments, and transfer of ownership. Further, this Agreement may be terminated by the State for the reason stated in subsection 8 hereof upon sixty (60) days written notice. This Agreement may also be terminated by the Tribe prior to the award of any project construction contract upon sixty (60) days written notice. It is understood and agreed that in the event this Agreement is terminate by the State for the reason stated in subsection 8 hereof, the abandonment of the Existing Sundog Bridge by the State to the Tribe shall not be affected by such termination and the State shall in no way be liable or obligated to maintain the Existing Sundog Bridge.

2. In addition, upon abandonment by the State the Existing Sundog Bridge, the Tribe will be responsible for all costs associated with the improvements/enhancements to the Existing Sundog Bridge, if any, and the Project up to the time of cancellation, if cancelled by the Tribe.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

6. In the event of any controversy that may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518. However, the Tribe's consent to arbitration shall not be construed or interpreted as a waiver of its sovereign immunity.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The State shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Yavapai-Prescott Indian Tribe
President, Board of Directors
530 East Merritt
Prescott, AZ 86301

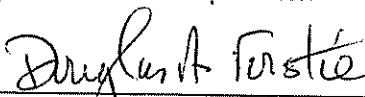
10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

YAVAPAI-PRESCOTT INDIAN TRIBE

By 
ERNEST JONES SR.
President

STATE OF ARIZONA
Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer

APPROVED:

UNITED STATES DEPARTMENT OF THE
INTERIOR, acting by and through the Bureau of
Indian Affairs

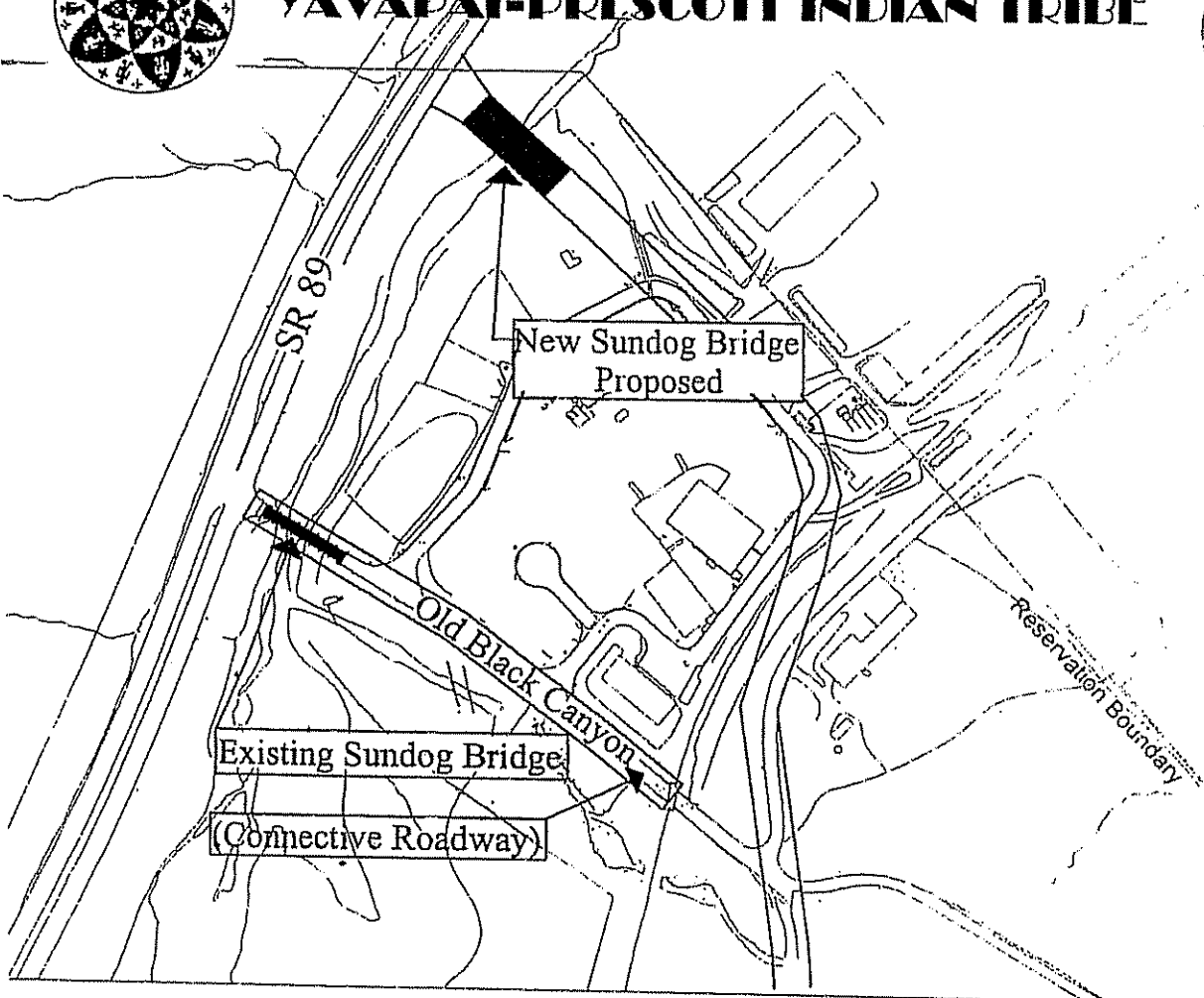
By SEE ATTACHED ATTORNEY FORM

Its _____



Exhibit A

YAVAPAI-PRESCOTT INDIAN TRIBE



APPROVAL OF THE YAVAPAI-PRESCOTT INDIAN TRIBE

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the YAVAPAI-PRESCOTT INDIAN TRIBE, an Agreement among public agencies which, has been reviewed pursuant to the Tribe's Articles of Association and declare this Agreement to be in proper form and within the powers and authority granted to the TRIBE under its laws. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 22 day of March, 2005.


MARK GUNNING
Tribe Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-1435-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 13 April 2005

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath", written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214